

COMMITTEE ON LIMITED JURISDICTION COURTS MINUTES

Wednesday, October 28, 2015

10:00 a.m. to 2:00 p.m.

Conference Room 119A/B

1501 West Washington Street

Phoenix, Arizona 85007

Present: Judge Antonio Riojas, Chair, Judge Timothy Dickerson, Julie Dybas, Jeffrey Fine, Judge Elizabeth R. Finn, Christopher Hale, Judge Eric Jeffery, Doug Kooi (proxy for Judge Maria Felix), Judge Dorothy Little, Marla Randall, Judge Laine P. Sklar, Paul Thomas (proxy for Judge J. Matias “Matt” Tafoya), Sharon S. Yates

Telephonic: Judge James William Hazel, Jr., Judge Arthur Markham

Absent/Excused: Chief Dan Doyle, Judge Steven McMurry

Presenters/Guests: Judge Mark Armstrong (Supreme Court Staff Attorney), Pamela Bridge (Community Legal Services), Ellen Katz (William E. Morris Institute for Justice), Judge Wendy Million (Tucson City Court), Janis Villalpando (Community Legal Services), and Judge Gerald Williams (North Valley Justice Court); Theresa Barrett, Stewart Bruner, Eric Ciminski, Brian Granillo, Jennifer Greene, Francelle Kounouho, Jerry Landau, Marretta Mathes, Mark Meltzer, Nick Olm, Kathy Sekardi, David Svoboda, Kathy Waters, David Withey, and Amy Wood, Administrative Office of the Courts (AOC)

Staff: Susan Pickard (AOC), Julie Graber (AOC)

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The October 28, 2015, meeting of the Committee on Limited Jurisdiction Courts (LJC) was called to order at 10:00 a.m. by Judge Antonio Riojas, Chair.

B. Approval of Minutes

The draft minutes from the August 26, 2015, meeting of the LJC were presented for approval.

Motion: To approve the August 26, 2015, meeting minutes, as presented. **Action:** Approve, **Moved by** Judge Dorothy Little, **Seconded by** Judge Timothy Dickerson. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Domestic Violence Offender Treatment Workgroup

Judge Wendy Million, Tucson City Court and Chair of the Domestic Violence Offender Treatment Workgroup, presented a new code section, ACJA § 5-209, which was drafted to implement provisions of SB1035 and establish minimum standards for courts when approving domestic violence offender treatment programs not otherwise approved by the Department of Health Services (DHS), a probation department, or the Department of Veterans Affairs (VA) for persons convicted of a misdemeanor domestic violence offense. The law authorizes courts to approve these programs, subject to rules created by the Arizona Supreme Court, and takes effect on January 1, 2016.

Judge Million discussed the purpose, goals and requirements of the new standards, which are modeled after the DHS regulations and would differentiate between intimate and non-intimate relationships. The standards are intended to address the high failure rate, cost disparity and lack of approved providers in rural counties by: allowing for non-DHS certified treatment providers; making the standards available for judges to use at their discretion to approve an alternative provider if a finding of good cause exists; and requiring judges to conduct compliance reviews of the approved treatment providers annually. She sought feedback from LJC and other stakeholders, as well as recommendation for approval before presenting the proposal to the Arizona Judicial Council (AJC) at the December meeting

Member comments:

- Several members commented that the proposed code section did not resolve logistical issues and suggested providing alternative delivery methods, such as Skype and FaceTime. Judge Million noted that the workgroup explored the issue but there is no research available on the topic and she stressed the importance of having a group dynamic and personal responsibility.
- Some members commented that educating offenders more quickly would reduce recidivism. Judge Million noted that the offenders need the minimum time for pre-contemplation and contemplation to facilitate changes in their behaviors.
- The timeframe for the review of treatment providers should be every two years rather than annually.

Motion: To approve the court approval of domestic violence offender treatment programs in concept, subject to the committee's concerns; and to review the final product before it is presented to AJC. **Action:** Approve, **Moved by** Judge Arthur Markham, **Seconded by** Jeff Fine. Motion passed unanimously.

B. R-14-0027: Rule 11, Rules of Procedure for Eviction Actions

Judge Mark Armstrong (Ret.), Supreme Court Staff Attorney, provided background information and an update on the status of rule petition, R-14-0027, to amend Rule 11, Rules of Procedure for Eviction Actions. The petition proposed telephonic or video conference appearances in eviction actions, subject to due process concerns. Judge Armstrong noted that the language is modeled after Rule 1(R) of the Arizona Rules of Protective Order because of the accelerated nature of both types of proceedings. For additional comment, he yielded the floor to Douglas C. Fitzpatrick, the petitioner; Judge Gerald Williams on behalf of the Maricopa County Justice Court bench; and Ellen Katz on behalf of the William E. Morris Institute for Justice. Judge Armstrong presented proposed language that addressed issues with statutory time standards, alignment of filing deadlines, equal protection for both parties, and practicality of a written request. Judge Armstrong sought feedback from LJC on the proposed language and inquired whether a middle-ground could be found that allowed the amended language to move forward.

Member comments:

- Concerns were raised about timing issues with the 24-hour rule because clerks cannot answer every call or return all voicemail messages when there is not enough information provided.

- Members felt that a written request should be required to appear telephonically. Judge Armstrong pointed out that the protective order rule does not require a written request and a judge will retain discretion with the proposed standards. Judge Finn reported not having a problem with telephonic appearances in protective order proceedings.
- Members believed a middle-ground could be reached regarding telephonic appearances in eviction actions; however, they agreed that more time was needed to resolve the matter of oral versus written motions, the 24-hour rule, and prior court approval for telephonic appearances.

Motion: To table until the next LJC meeting on February 28, 2016. **Action:** Approve, **Moved by** Judge Eric Jeffery, **Seconded by** Julie Dybas. Motion passed unanimously.

C. Mesa and Glendale Rule 11 Pilot Project

Judge Elizabeth Finn, Glendale City Court, and Paul Thomas, Mesa Municipal Court, presented information on the Glendale City Court and Mesa Municipal Court pilot project to facilitate Rule 11 competency evaluation and subsequent ruling at the local court level. Judge Finn explained how this proposal would (1) allow a process for city court judges to act as Superior Court *judge pro tem* and preside over Rule 11 proceedings at their courthouses; (2) use doctors on the approved Superior Court list; and (3) keep the case's Superior Court jurisdiction.

The presenters summarized the processes developed to date, those in progress, and the benefits of facilitating these proceedings at the local level for city courts, city court judges, and clerks' offices. The highlighted benefits included:

- By allowing defendants to have their evaluations conducted at the courthouse instead of another off-site location, the "no show" rate was drastically reduced from 40% to 0%;
- Case processing times can be shortened by monitoring timelines on doctors' reports;
- Significant cost savings can be achieved by negotiating flat rates with doctors; and
- Fulfills access to justice goals.

The proposed pilot project was approved by the AJC last week and will start in January 2016.

Member comments:

- Would limited jurisdiction courts handle restoration at the local level? No. It would remain a Superior Court matter.
- Will judges have the ability to send a case to the superior court? Yes. The jurisdiction of a Rule 11 case would not change.

D. 2016 Meeting Schedule

Susan Pickard, AOC, reviewed the 2016 proposed meeting schedule:

- Wednesday, February 24
- Wednesday, May 25
- Wednesday, August 31
- Wednesday, November 16

Motion: To approve the 2016 meeting schedule, as presented. **Action:** Approve, **Moved by** Judge Timothy Dickerson, **Seconded by** Sharon Yates. Motion passed unanimously.

E. SB1116 and Community Restitution

Marretta Mathes, AOC Senior Court Operations Specialist, discussed the impact of SB1116, which authorizes a municipal or justice court to order a defendant to complete community restitution in criminal cases to be credited at a rate of \$10.00 per hour in lieu of payment for all or part of the amount owed if the court finds the defendant is unable to pay, or if the defendant is in contempt for failure to pay, a fine, fee, assessment or incarceration costs. Ms. Mathes noted that a draft Q&A form was developed to address potential implementation issues for courts when the bill becomes effective on January 1, 2016. She reviewed the document and sought feedback from members on whether additional questions should be included before it is distributed in December as part of a statewide memorandum. Members should forward additional questions to her and David Withey.

Member comments:

- Mr. Withey noted that reimbursable costs are not addressed in A.R.S. § 13-824 and cannot be satisfied by community restitution.
- What is the impact of the bill on a court that already has a community restitution program in place? The provisions of A.R.S. § 13-824 will be effective and take precedence over current programs. This question will be added to the Q&A.
- Do fees provided by local ordinances take priority over statutory fees? Yes.

F. Interpreter Credentialing Program

Amy Wood, Court Services Division, Case Flow Management, updated members on the proposed interpreter credentialing program since presenting at the August LJC meeting and following AJC's approval to move forward with interpreter credentialing, the proposed fee structure and the model code of ethics. Ms. Wood highlighted changes to the program and addressed concerns raised by stakeholders.

- Background checks for staff and freelance interpreters will remain with the court and will not be part of the credentialing program.
- Interpreting skills for lesser used languages that are not covered by the National Center for State Courts' (NCSC) oral examination will be tested with the oral proficiency interview. The AOC has reached out to NCSC about available resources for the language, Dinka.
- Courts are to show a preference for using credentialed freelance interpreters and will be required to have staff interpreters credentialed within 36 months.
- Fees will be based on residency.

- The credentialing program will provide for reciprocity.
- The AOC will communicate with interpreter agencies and associations about the credentialing program to bring more awareness.
- At the last meeting, members inquired whether the tiered program could result in an appellate issue when multiple parties require an interpreter for the same rare language and each is provided with an interpreter with a different level of credentialing. Ms. Wood reported that it would not really be an issue from Arizona law's perspective because the error in interpreting would have to be substantial and be shown to impact on the outcome of the event.
- The AOC is asking court administrators to share audio files to build a body of cases that can be used as resources for interpreters to gain skills.
- There will be two cycles of testing per year.

Member comments:

- A member inquired about how to evaluate the skills of court staff who converse with limited English proficiency court customers at the front counter. Ms. Wood noted that the credentialing program does not apply to bilingual non-interpreter staff who carry out their duties in a language other than English.

G. 2015 Rules Agenda

Mark Meltzer, AOC Senior Policy Analyst, reviewed the 2015 rule petitions of interest to limited jurisdiction courts that were adopted. The general effective date is January 1, 2016.

Criminal Procedure

R-15-0009: The rule petition repeals the Rules of Procedure in Traffic and Boating Cases; moves the Arizona Traffic Ticket and Complaint (ATTC) form from the repealed rules to the Civil Traffic Rules; and applies to cases filed on or after January 1, 2016.

R-15-0005: The rule petition allows the court having jurisdiction over the defendant to either issue a notice to schedule a hearing, or issue a summons or warrant to compel the defendant's presence, upon receipt of a petition or a written report.

R-15-0011: The rule petition clarifies that redactions must be identified and the legal basis stated in discovery documents.

R-15-0017: The rule petition requires additional notifications to defendants on certain forms that they will lose their right to directly appeal a guilty verdict if they fail to appear for sentencing within 90 days after conviction.

R-15-0024: The rule petition establishes a new standard warrant form that merges eight forms into Form 2; and is mandatory as of January 1, 2016.

R-15-0026: New questions are included regarding military service, homeless status, and language skills in Rule 41, Form 4(a) and Form 4(b).

Rules of the Supreme Court

R-15-0020: The rule petition requesting that gender identity be recognized was denied because Rule 2.3 already prohibits judges from manifesting improper bias.

R-15-0027: The rule petition clarifies access to personnel records and includes a new definition for high-level administrative positions.

Other Rule Petitions

R-15-0015: The rule petition requesting a preemptory change of judge in eviction actions was denied.

R-15-0010: The rule petition reorganizes the Arizona Rules of Protective Order Procedure.

R-15-0018: The rule petition amends the definition of a mediator by adding that serving as a mediator is not the practice of law.

H. Legislative Update

Jerry Landau, AOC Government Affairs Director, noted that there is not any legislation being proposed that would directly affect limited jurisdiction courts but a few issues are being considered:

- The Arizona Criminal Justice Commission (ACJC) will examine changes to the fingerprinting protocol in the State so all fingerprinting would be reported to the booking agency, except in misdemeanor cases, which would go to the arresting agency.
- Arizona Prosecuting Attorneys Advisory Council (APAAC) has formed a working group regarding the criminal sentencing code in the 2017 legislation session.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

None present.

B. Next Committee Meeting Date

Wednesday, February 24, 2016

10:00 a.m. to 3:00 p.m.

State Courts Building, Room 119

1501 West Washington Street

Phoenix, Arizona 85007

Meeting adjourned at 1:34 p.m.